

No. S122865

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

BARBARA LEWIS, CHARLES MCILHENNY, and  
EDWARD MEI,

*Petitioners,*

v.

NANCY ALFARO, County Clerk of the City and County of  
San Francisco in her official capacity,

*Respondent.*

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**RESPONDENT'S OBJECTIONS TO DECLARATIONS  
SUBMITTED BY PLAINTIFF IN SUPPORT OF  
SUPPLEMENTAL BRIEF IN SUPPORT OF VERIFIED  
PETITION FOR IMMEDIATE STAY AND  
PEREMPTORY WRIT OF MANDATE IN THE FIRST  
INSTANCE**

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Respondent Nancy Alfaro (“Respondent”) hereby objects, as described below, to the evidence submitted by Petitioners in support of their Supplemental Brief in Support of Verified Petition for Immediate Stay and Peremptory Writ of Mandate in the First Instance:<sup>1</sup>

### **GENERAL OBJECTIONS TO DECLARATION OF STANLEY KURTZ**

Respondent objects to Dr. Kurtz’s Declaration in its entirety. Dr. Kurtz fails to establish a foundation showing that he has sufficient special knowledge, skill, experience, training, or education on which to make his arguments that the introduction of same-sex unions and marriages in Scandinavia and the Netherlands resulted in an increase in out-of-wedlock parenting and a decrease in opposite-sex marriages in these regions. Dr. Kurtz fails to cite any academic research (other than his own articles in a politically-oriented news magazine) that forms the basis of his arguments. He does not assert that he has ever visited or conducted research in the Netherlands or the nations comprising Scandinavia, nor does he provide any basis for his claim that marriage and childbirth trends from that region have any applicability to other nations in Europe or to the United States. He also fails to assert any statistical basis for his argument that the concepts of marriage and childbearing have been or should be

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<sup>1</sup>Respondent reserves the right to further object to the qualifications and purported expertise of the Declarants herein and to submit rebuttal expert evidence at an appropriate time. Moreover, nothing in these Objections should be taken as a concession or admission by Respondent of the scientific validity of the articles and studies cited nor of the accurate characterization of such studies by Declarants. Respondent reserves the right to challenge Declarants’ use of such references on the above or any other grounds.

coupled, or that the increase in same-sex partnerships has any impact on the connection of these two concepts. Expert opinions must be based upon facts, research, and other matters that reasonably support the conclusions to be drawn. Experts are not entitled to rely on speculation or conjecture. Cal. Evid. Code §801; *Korsak v. Atlas Hotels, Inc.*, 2 Cal. App. 4th 1516, 1526 (1992). Accordingly, Dr. Kurtz’s purported expert opinions lack proper foundation and should be excluded. Respondents incorporate these general objections in each of the specific objections listed below.

### **SPECIFIC OBJECTIONS TO DECLARATION OF STANLEY KURTZ**

<u>Purported Evidence</u>	<u>Objections</u>
1. Page 2, paragraph 7. “In a recently published article, ‘The End of Marriage in Scandinavia’ ( <i>The Weekly Standard</i> , February 2, 2004), I argue that the system of marriage-like same-sex registered partnerships established in the late eighties and early nineties in Scandinavia has contributed significantly to the ongoing decline of marriage in that region.”	1. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no indication of the basis for his assertions in this article, nor does he indicate how the content of an article in a politically-oriented news magazine has any basis in academic literature on the subject of marriage in Northern Europe. Additionally, there is no indication of how the article cited has any relevance to the question of marriage in California.
2. Page 2, paragraph 8. “In my forthcoming publications on the Netherlands, I shall argue that same-sex marriage has contributed significantly to the decline of marriage in that country.”	2. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no indication of the basis for his assertions in these “forthcoming publications,” nor does he indicate how he has done any research that allows him to write an article on the impact of same-sex marriage in the Netherlands. Additionally, there is no indication of how the forthcoming publications have any relevance to the question of marriage in California.
3. Page 3, paragraph 10. “Marriage in Scandinavia is in serious	3. Conclusory, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350,

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decline. A majority of children in Sweden and Norway are now born out-of-wedlock, as are sixty percent of first born children in Denmark. In some of the more socially liberal districts of Scandinavia, marriage itself has virtually ceased to exist.”

#### 4. Page 3, paragraph 11.

“When Scandinavia’s system of marriage-like same-sex registered partnerships was enacted in the late 1980’s and early 1990’s, Scandinavian marriage was already in decline. Many Scandinavians were having children out-of-wedlock, although it was still typical for parents to marry sometime before the birth of the second child.”

#### 5. Page 3, paragraph 12.

“[C]ohabiting parents break up at two to three times the rate of married parents.”

#### 6. Page 3, paragraph 12.

“A high breakup rate for unmarried parents is found in Scandinavia, and throughout the West. For this reason, rising rates of out-of-wedlock birth—even when such births are to cohabiting, rather than single, parents—mean rising rates of family dissolution.”

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801. Dr. Kurtz provides no explanation for the basis of these assertions, and he does not indicate how a decline in marriage in Scandinavia (a region encompassing the nations of Sweden, Norway, and Denmark), has any relation to out-of-wedlock child birth statistics in these three distinct nations.

4. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz does not provide any basis for these assertions, nor does he indicate how the decline in marriage in Scandinavia is determined. Moreover, Dr. Kurtz does not provide any explanation for the connection between a decline in marriage rates and the incidence of out-of-wedlock childbirth.

5. Conclusory, vague and ambiguous, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz does not provide any basis for this assertion, nor does he indicate (1) whether this assertion relates only to opposite-sex couples or includes same-sex cohabiting parents or (2) what countries and time periods in relation to which this assertion is made.

6. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no foundation for asserting that a high breakup rate for unmarried parents is found throughout “the West,” nor does he indicate what constitutes “the West” for purposes of this assertion. Additionally, Dr. Kurtz fails to explain whether the assertion that rising rates of out-of-wedlock birth mean any such rising rates of family dissolution apply only to opposite-sex cohabiting couples or to same-sex couples as well. Also, assuming *arguendo* that there are rising rates of out-of-wedlock birth, Dr. Kurtz fails to explain any connection of such rates to rising rates of family dissolution.

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### 7. Pages 34, paragraph 13.

“Since demographers and sociologists take rising out-of-wedlock birthrates as a proxy for rising rates of family dissolution, we know that the family dissolution rate in Scandinavia has been growing.”

### 8. Pages 3-4, paragraph 13.

“[Demographers and sociologists] also have studies that confirm for Scandinavia what we already know for the United States—that children of intact families are significantly better off than children in families that experience parental breakup.”

### 9. Page 4, paragraph 14.

“Out-of-wedlock birthrates were already rising in Scandinavia prior to the enactment of same-sex registered

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7. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz does not provide any explanation for the assertion that demographers and sociologists take rising out-of-wedlock birthrates as a proxy for rising rates of family dissolution. Rather, this unsupported statement represents a conclusory attempt to pass his argument off as accepted practice within academic circles. And again, he provides no basis for stating that out-of-wedlock birthrates indicate anything about the purported “growing” family dissolution rate in Scandinavia.

8. Conclusory, vague and ambiguous, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. The assertion that children in “intact” families are significantly better off than children in families that experience parental breakup is vague and made without foundation. Dr. Kurtz does not provide any basis for making this assertion, nor does he indicate exactly how children from such “intact” families show any signs of being better off than other children. Additionally, this statement is too broad to be relevant to Dr. Kurtz’s arguments because there is no indication of whether the purported negative effects on children in families that experience parental breakup stem from the fact of the breakup or from other situational effects (e.g., the socioeconomic status of the families going through the breakup, the availability of support systems for children and parents in such families, the incidence of substance abuse, unemployment, or domestic violence in such situations, etc.).

9. Conclusory, lack relevance, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This statement inappropriately implies without

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partnerships. Those rates have continued to rise since the enactment of same-sex registered partnerships.”

10. Page 4, paragraph 14.

“[T]he common practice in Scandinavia through the 1980’s was to have the first child out of wedlock. Prior to the nineties in Norway, for example, a majority of parents—even in the most socially liberal districts—got married prior to the birth of a second child.”

11. Page 4, paragraph 16.

“Marital decline in Scandinavia is the product of a confluence of factors: contraception, abortion, women in the workforce, cultural individualism, secularism, and the welfare state. Scandinavia is extremely secular, and its welfare state unusually large.”

12. Page 4, paragraph 16.

“Scandinavian law tends to treat marriage and cohabitation alike.”

13. Pages 4-5, paragraph 16.

“[T]he factors driving marital decline in Scandinavia are present in all Western countries. Scholars have long taken

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providing a foundation that a connection exists between out-of-wedlock birthrates and the enactment of same-sex registered partnerships.

10. Vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. This statement is vague in that it implies that the marriage trends in Norway relate to the marriage trends of the other nations comprising the Scandinavian region.

11. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no foundation for this assertion. His view that marital decline is a result of the ability of women to choose when to have a child and whether to work implies without any foundation that marriage in Scandinavia has traditionally been premised on the existence of unwanted children and mothers who are content to stay at home. This orthodox dogma has no relevance to Dr. Kurtz’s assertion that same-sex unions foretell the end of opposite-sex marriage. Additionally, Dr. Kurtz provides no foundation for the argument that Scandinavia’s welfare system has any relationship to the marital decline in that region. The relevance of the assertion is also unclear in the context of same-sex marriage in California.

12. Improper lay opinion, fails to establish a reasonable basis for expert opinion, improper legal conclusion. Cal. Evid. Code §§801, 803. This statement lacks foundation and represents lay testimony. Dr. Kurtz has not indicated any basis for asserting an expertise in Scandinavian law.

13. Conclusory, vague and ambiguous, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion lacks foundation and

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Scandinavian family change as a bellwether for family change throughout the West.”

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is vague and ambiguous as Dr. Kurtz has not indicated (1) the basis for his assertions regarding the factors driving marital decline in Scandinavia, (2) that such factors are present in Western countries, (3) the countries that are included in his definition of “Western” countries, (4) how he has any expertise in relation to such Western countries, and (5) what groups of scholars have taken Scandinavian family change as an indication of broader trends through the West. The last aspect of this assertion—that “Scholars” have “long taken” change in Scandinavia to represent future trends in other nations is highly objectionable based on the failure to indicate what nations are included in this sweeping assertion and what scholars espouse such views, and further this statement fails to account for the vast and complex differences between countries found in Europe and North America (assuming these are the “Western” countries to which Dr. Kurtz refers).

14. Page 5, paragraph 17.

“There is good reason to believe that same-sex marriage, and marriage-like same-sex registered partnerships, are both an effect and a reinforcing cause of this Scandinavian trend toward unmarried parenthood. The increasing cultural separation between the ideas of marriage and parenthood makes same-sex marriage more conceivable. Once marriage is separate from the idea of parenthood, there seems little reason to deny marriage, or marriage-like partnerships, to same-sex couples. By the same token, once marriage (or a status close to marriage) has been redefined to include same-sex couples, the symbolic separation between marriage and parenthood is confirmed, locked-in, and reinforced. It is virtually impossible to believe that same-sex partnerships could be an effect of the cultural separation of marriage and parenthood without also becoming a reinforcing cause of that same

14. Lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz asserts without providing any foundation that there is or should be a connection between the ideas of parenthood and marriage. This argument ignores the fact that many opposite-sex couples get married without any interest or intent to have children, that the existence of children has not prevented opposite-sex couples from separating, and that same-sex couples who seek to get married or have a marriage-like union may want to have children. These facts are critical barriers to the other assertion made by Dr. Kurtz in this paragraph, which is that the existence of same-sex unions or marriages would reinforce any such separation between marriage and parenthood.

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separation.”

15. Pages 5-6, paragraph 18.

“Concretely, same-sex partnerships in Scandinavia have furthered the cultural separation of marriage and parenthood in at least two ways. First, the debate over same-sex partnerships has split the Norwegian church. The Norwegian church is the strongest cultural check on out-of-wedlock birth in Norway, since traditional clergy preach against unmarried parenthood. Yet differences within Norway’s Lutheran church on the same-sex marriage issue have weakened the position of traditionalist clergy, and strengthened the position of socially liberal clergy who effectively accept both same-sex partnerships and the practice of unmarried parenthood.”

16. Page 6, paragraph 19.

“This pattern [(presumably of the split within the Norwegian church)] has been operative since the establishment of same-sex registered partnerships early in the nineties.”

17. Page 6, paragraph 19.

“[Rainbow flags at churches in the socially liberal Norwegian county of Nordland] welcome clergy in same-sex registered partnerships, and signal that clergy who preach against homosexual behavior are banned.”

18. Page 6, paragraph 20.

“When scholars draw conclusions about the causal effects on marriage of various beliefs and practices, they do so by combining statistical correlations with a cultural analysis. For example, we know that out-of-wedlock birthrates are unusually low in traditionally

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15. Fails to establish a reasonable basis for expert opinion, improper lay opinion. Cal. Evid. Code §§801, 803. The assertion in this paragraph is made without foundation and represents lay testimony. Dr. Kurtz has not provided any basis for believing that he is an expert in religion in Norway or in Scandinavia overall. Additionally, he provides no basis for asserting that the Norwegian church is the strongest check on out-of-wedlock birth or that “socially liberal clergy” support same-sex unions and unmarried parenthood.

16. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz does not provide any foundation for explaining the nature of the split between the traditional and socially liberal clergy in Norway, nor has he provided any foundation for asserting a connection between the split and the existence of same-sex registered partnerships.

17. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz provides no basis for his assertion that clergy who preach against homosexual behavior are banned from churches with rainbow flags, and he does not provide any basis for the corresponding inference that there are no socially conservative clergy within liberal Norwegian counties.

18. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz fails to explain how exactly conclusions may be drawn between statistical correlations and cultural analysis, and for this reason his assertion that scholars “reasonably conclude” that low out-of-wedlock birthrates are casually related to



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religious districts of Norway, where clergy actively preach against the practice of unmarried parenthood. Scholars reasonably conclude that the low out-of-wedlock birthrates in such districts are causally related to the preaching of these traditionalist[] clergy.”

19. Page 6, paragraph 21.

“The judgement that same-sex marriage has contributed to rising out-of-wedlock birthrates in Norway is of exactly the same order as the aforementioned scholarly conclusion. If traditionalist preachers in socially conservative districts of Norway help to keep out-of-wedlock birthrates low, it follows that a ban on conservative preachers in socially liberal districts of Norway removes a critical barrier to an increase in those rates. Since the division within the Norwegian church caused by the debate over same-sex unions has led to a banning of traditionalist clergy (the same clergy who preach against unmarried parenthood) it follows that the controversy over same-sex partnerships has helped to raise the out-of-wedlock birthrate.”

20. Page 7, paragraph 22.

“The cultural meaning of marriage-like same-sex partnerships in Scandinavia tends to heighten the separation of marriage and parenthood in secular, as well as religious, contexts. As the influence of the clergy has declined in Scandinavia, secular social scientists have taken on a role as cultural arbiters. These secular social scientists have touted same-sex registered partnerships as proof that traditional marriage is outdated. . . . These opinion leaders have pointed to same-sex partnerships to argue that marriage itself is outdated, and that single motherhood and

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traditionalist preaching lacks foundation. In fact, there is no indication of what role such traditionalist preaching plays on birthrates in these regions, and it may be that other factors explain low out-of-wedlock birthrates. As such, these statements lack foundation.

19. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. This assertion by Dr. Kurtz is based on an unsupported supposition. As noted in the prior objection, Dr. Kurtz provides no foundation for his conclusion that the nature of preaching in a region has any impact on the incidence of out-of-wedlock birthrates. Similarly, he has not provided any basis for his assertion that same-sex partnerships have any relationship to a ban on conservative clergy. He has also failed to provide any foundation for his argument that conservative preachers provide a critical barrier to the prohibition against out-of-wedlock births. Finally, there could be any number of reasons that show a statistical correlation with an increase in the out-of-wedlock birthrate, and Dr. Kurtz has provided no evidence supporting his conclusory assertion that it is the split among the clergy due to same-sex unions that is responsible for the trend.

20. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no basis for his assertion that social scientists play a significant role as “cultural arbiters” in Scandinavian society. Moreover, his statement that the influence of the clergy has declined belies his earlier assertion that the influence of socially liberal clergy is responsible for the increase in the out-of-wedlock birthrate. Moreover, these points lack relevance to the present proceedings.

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unmarried parental cohabitation are just as acceptable as parenthood within marriage.”

21. Page 7, paragraph 23.

“Same-sex adoption was not used [during the debate regarding allowing same-sex partners to adopt] to heighten the cultural connection between marriage and parenthood. On the contrary, same-sex adoption was taken to prove that the traditional family was outdated, and that novel social forms—like single parenthood, were now fully acceptable.”

22. Page 7, paragraph 24.

“[W]e can conclude that the advocacy of culturally radical public intellectuals has helped to spread the practice of unmarried parenthood in socially liberal districts. These secular intellectuals have consistently pointed to same-sex registered partnerships as evidence that marriage is outdated, and unmarried parenthood as acceptable as any other family form. In this way, we can isolate the causal effect of same-sex registered partnerships as one among several causes contributing to the decline of marriage in Scandinavia.”

23. Page 8, paragraph 26.

“[The] nearly twenty point shift in the out-of-wedlock birthrate for second-and-above born children since 1990 signals that marriage itself is now a rarity in Nordland county. What began as a practice of experimenting with the relationship through the birth of the first child has now turned into a general repudiation of marriage itself.”

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21. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz’s assertion on this point is a *non sequitur*—if the debate was relating to the adoption of children by same-sex couples, then it would have been incongruous for advocates of such adoptions to argue that single parenthood was fully acceptable. Additionally, Dr. Kurtz provides no basis for his knowledge of the issues relating to same-sex adoption.

22. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz provides no foundation or statistical correlation in support of any such conclusion of the advocacy of intellectuals and the effect of same-sex partnerships on marriage. Specifically, Dr. Kurtz has given no analysis whatsoever of any causal relationship between same-sex relationships and a decrease in marriage.

23. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion has two fundamental flaws that prohibit its use. First, the assertion that any change in the out-of-wedlock birthrate is an indication that marriage is now a “rarity” is made without any foundation. No information is provided regarding the incidence of marriage to couples who never have children, and therefore this assertion cannot be made. Second, Dr. Kurtz’s self-serving assertion that a statistical trend indicates a general repudiation of marriage itself is also given without foundation. Dr. Kurtz has not provided

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### 24. Page 9, paragraph 28.

“With a clear majority of even second-and-above born children now born out-of-wedlock, it is evident that marriage has nearly disappeared in some socially liberal counties of Norway. In the parts of Norway where de facto gay marriage finds its highest degree of acceptance, marriage itself has virtually ceased to exist. This fact ought to give pause.”

### 25. Page 9, paragraph 29.

“The situation in the Netherlands confirms and strengthens the argument for a casual contribution of same-sex marriage to the decline of marriage. . . . The experience of the Netherlands shows that not only marriage-like registered partnerships open to same-sex couples, but also full and formal same-sex marriage, contributed to the decline of marriage.”

### 26. Page 9, paragraph 30.

“The practice of premarital cohabitation is very widespread in the Netherlands, and in a European context, high rates of premarital cohabitation are generally associated with high out-of-wedlock birthrates.”

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any statistics regarding the marriage rate in Nordland county, nor has he indicated any statistical analysis of the correlation between childbirth and marriage. For these reasons, this paragraph lacks foundation.

24. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz fails to provide any foundation for the assertion that marriage has nearly disappeared in some areas of Norway. Although he states that some children are now born out-of-wedlock, he makes no statements about the number of marriages into which no children are born. Without this information, no conclusions can be drawn about the effect of out-of-wedlock births on marriage. Additionally, Dr. Kurtz has not provided any foundation for drawing a connection between the acceptance of gay marriage and the decrease in the rate of opposite-sex marriages, and for this reason the implication of the final statement that “this fact ought to give pause” is vague.

25. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz has not provided any foundation for his argument that same-sex marriages contribute to the decline of opposite-sex marriage. This statement is therefore conclusory and argumentative. Additionally, Dr. Kurtz has not demonstrated any relevance of the situation in the Netherlands to marriages in the United States.

26. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz provides no foundation for making assertions about the practices of premarital cohabitation either in the Netherlands or across Europe. Additionally, he provides no statistical basis for correlating any such rates of premarital cohabitation with out-of-wedlock birthrates. This assertion is also

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27. Pages 9-10, paragraph 31.

“Most scholars attribute the unexpectedly low out-of-wedlock birthrates in the Netherlands to the strength of conservative cultural tradition in the Netherlands.”

28. Page 10, paragraph 33.

“In 1996, just as the campaign for gay marriage went into high gear, the unusually low Dutch out-of-wedlock birthrate began to rise at a rate of two percent per year, in contrast to [its] earlier average rise of only one percent per year.”

29. Pages 10-11, paragraphs 34-36.

“Some might argue that the ‘marriage lite’ of registered partnerships opened to both same-sex and opposite-sex couples in the mid-nineties can account for the rapid increase in the out-of-wedlock birthrate. That is, it could be argued that had the Netherlands established full and formal gay marriage in the mid-nineties, instead of a system of registered partnerships open to same-sex and opposite-sex couples, out-of-wedlock birthrates would have remained low.

“In fact, however, Dutch demographers discount the ‘marriage lite’ effect on the out-of-wedlock birthrate. The number of heterosexual couples entering into registered partnerships in the nineties was simply too small to account for the two-fold increase in growth of the out of wedlock birthrate during this period. By the same token, the out-of-wedlock birthrate has continued to climb at a very fast two percent per year since the

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contradicted by the statement in the next paragraph that “the practice of cohabiting parenthood in the Netherlands has been surprisingly rare.” For these reasons, the assertions in this paragraph lack foundation.

27. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz provides no explanation for what scholars share this attribution or the basis of any such conclusion. For this reason, the statement is made without any foundation.

28. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz uses this statement to imply that there is a statistically significant correlation or causal effect between the debate over gay marriage and the increase in the out-of-wedlock birthrate, yet he has provided no foundation for drawing any such conclusion.

29. Conclusory, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. The argument forwarded by Dr. Kurtz that same-sex marriage has increased the cultural separation of marriage from parenthood in the Netherlands does not have any foundation based on the language in these three paragraphs. Dr. Kurtz states that heterosexuals did not take advantage of the opposite-sex registered partnerships and therefore that such partnerships cannot account for the increase in out-of-wedlock births in the Netherlands. Although this may be true, Dr. Kurtz provides no explanation for how the campaign for same-sex marriages has any effect on the incidence of out-of-wedlock births in the Netherlands. Aside for the coincidence of the debate over same-sex marriages and the increase in the rate of out-of-wedlock births, Dr. Kurtz has not explained how the two concepts relate, if at all. Likewise, there is no relevance of the asserted conclusion to same-sex marriage in California.

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establishment of full and formal gay marriage in 2001.

“In light of all this, it is reasonable to conclude that the traditionalist ‘cultural capital’ that scholars agree kept the Dutch out-of-wedlock birthrate artificially low (despite the legal equalization of marriage and cohabitation in the eighties) has been displaced and depleted by the long public campaign for same-sex marriage. Same-sex marriage has increased the cultural separation of marriage from parenthood in the Netherlands, just as it has in Scandinavia.”

30. Page 11, paragraph 37.

“This history enables us to isolate the causal mechanism in question. Since legal and structural factors effecting marriage had failed to produce high out-of-wedlock birthrates in the Netherlands through the mid-nineties, the scholarly consensus was that cultural factors—and only cultural factors—were keeping the out-of-wedlock birthrates low. It took a new cultural outlook on the connection between marriage and parenthood to eliminate the traditional cultural barriers to unmarried parental cohabitation. Same-sex marriage, along with marriage-like registered partnerships open to same-sex couples, provided that outlook.”

31. Pages 11-12, paragraph 38.

“The danger in all this is that same-sex marriage could widen the separation between marriage and parenthood here in the United States. America is already the world leader in divorce. Our high divorce rates have significantly weakened the institution of marriage in this country. For all that, however, Americans differ from Europeans in that they commonly assume that couples ought to marry prior to having

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30. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz has not provided any basis for asserting the existence of a connection between the availability of same-sex partnerships and the increase in out-of-wedlock births. Although he states that the consensus is that only cultural factors can account for such an increase, he does not indicate anything about the nature of this consensus, nor does he undertake a review of the cultural factors that could be at play. Dr. Kurtz’s assertion is nothing more than a conclusory statement that lacks any foundation.

31. Conclusory, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz has not established any expertise in relation to marriage or parenting in the United States. He has not established how any of the trends he argues are seen in Scandinavia and the Netherlands, if they exist at all, translate to the unique cultural, religious, and economic realities of American society. And he has not provided any basis for arguing that in the United States, parenthood and marriage

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children. Although the association of marriage and parenthood is weak in the American underclass, it is still remarkably strong in the rest of American society.”

32. Page 12, paragraph 39.

“Yet, the first signs of European-style parental cohabitation are now evident in America. . . . The danger is that same-sex marriage could introduce the sharp cultural separation of marriage and parenthood in America that is now familiar in Scandinavia. That, in turn, could draw out the budding American trend towards unmarried but cohabiting parenthood, and the associated legal equalization of marriage and cohabitation.”

33. Pages 12-13, paragraph 40.

“Same-sex marriage has every prospect of being even more influential in America than it has already been in Europe. . . . And a combination of the Scandinavian cultural pattern with America’s already high divorce rate would likely mean a radical weakening of marriage—perhaps even the end of marriage itself.”

34. Page 13, paragraph 41.

“America’s substantial underclass compounds the potential dangers of importing a Scandinavian-style separation between marriage and parenthood. . . . A weakening of the ethos of marriage in the middle and upper-middle classes would likely undo the progress made since welfare reform in stemming the tide of single

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are linked in a majority of the American population. For these reasons, the statements are conclusory and lack foundation.

32. Conclusory, fails to establish a reasonable basis for expert opinion, improper lay opinion. Cal. Evid. Code §§210, 350, 801. As already noted, Dr. Kurtz has failed to provide any foundation for comparisons between the United States and countries in Europe. Additionally, he has not provided any foundation for arguing that marriage and parenthood are concepts that are connected in America or that, even if they are, the introduction of same-sex partnerships or marriages would serve to uncouple any such connection. Also, Dr. Kurtz has no expert basis for asserting conclusions about the legal impact of same-sex unions on marriage and cohabitation.

33. Conclusory, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz’s absurd assertion that same-sex marriage will result in the end of marriage in America is hyperbole and is conjecture lacking any foundation. As noted, Dr. Kurtz has not provided any basis for asserting that trends in Europe are applicable in the United States or that same-sex marriage will have any impact on marriage or childbearing in the United States. This statement is also conclusory in relation to the impact of same-sex marriages in California and argumentative in drawing inferences from facts.

34. Conclusory, lacks relevance, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz has not shown the existence in the United States of a connection between marriage and parenthood. He has not provided any foundation for discussing marriage and parenthood in Great Britain. He has not provided any foundation for arguing that the on-going project of welfare reform in

### Purported Evidence

parenthood among our underclass. This is foreshadowed in Great Britain, where the Scandinavian pattern of unmarried but cohabiting parenthood is rapidly spreading.”

35. Page 13, paragraph 42.

“In Scandinavia, a massive welfare state largely substitutes for the family. Most Scandinavian children over one year of age, for example, spend much of the day in public day care facilities. Should the Scandinavian cultural pattern take root in the United States, with its accompanying effects on the underclass, we shall be forced to choose between significant social disruption and a substantial increase in our own welfare state. The fact of marriage therefore impacts the broadest questions of governance.”

36. Pages 13-14, paragraph 43.

“Note also that scholars of marriage widely discuss the likelihood that the Scandinavian family pattern will spread throughout the West—including the United States. And in effect, the spread of the movement for same-sex marriage from Scandinavia to Europe to North America is further evidence that what happens in Scandinavia can and does have every prospect of spreading to the United States. Unless we take steps to block same-sex marriage and prevent the legal equalization of marriage and cohabitation, it is entirely likely that America[] will experience marital decline of the type now familiar in Scandinavia.”

37. Page 14, paragraph 44.

“In effect, the adoption of same-sex marriage in the Netherlands has prefigured this entire process.”

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this country has had any impact on single parenthood, and he had not shown how the existence of same-sex marriages would impact single parenthood among America’s underclass. Dr. Kurtz’s conclusions about the impact of same-sex marriages on single parenthood is therefore also argumentative and conclusory.

35. Lacks relevance. Cal. Evid. Code §§210, 350. Dr. Kurtz has not indicated how cultural patterns in Scandinavia, if any exist along the lines described in his declaration, have any relevance to the United States.

36. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Kurtz provides no explanation of which scholars discuss the likelihood of trends from Scandinavia spreading to the United States, nor does he indicate what conclusions are reached by these scholars. For this reason, there is no foundation for the assertion that trends in Scandinavia will translate to the United States. Additionally, Dr. Kurtz has failed to show any basis for his argument that the legalization of same-sex marriage will result in marital decline in the United States, especially in light of Dr. Kurtz’s failure to address the existing basis of any current decline in marriage in the United States.

37. Conclusory, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 250, 801. Dr. Kurtz has not provided any foundation for arguing that trends from

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38. Page 14, paragraph 45.

“I have shown that same sex marriage contributed significantly to this pattern of marital decline [in Scandinavia and the Netherlands.] Recall that the social harm in all this is the damage to children. Children will suffer if the Scandinavian pattern takes hold, because to concomitant of the Scandinavian pattern is a rising rate of family dissolution.”

39. Page 14, paragraph 46.

“Even someone who receives this argument skeptically ought to pause for further consideration before making irrevocable decisions about the adoption of same-sex marriage. Given the fact that marriage itself is literally disappearing in the places where same-sex marriage—or marriage-like same-sex statuses—have existed for significant periods of time, precipitous adoption of same-sex marriage in the United States is clearly contraindicated.”

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the Netherlands are applicable to other nations, including the United States.

38. Conclusory, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Kurtz never in his declaration provides sufficient foundation for arguing that same-sex marriage plays any role in the decline of marriage in Scandinavia or the Netherlands. He also has never provided any basis for arguing that there is a related social harm suffered by children.

39. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. This conclusory and overbroad statement regarding the contraindication of same-sex marriage in the United States is premised on the foundationless assertions forwarded by Dr. Kurtz throughout his declaration.

### **GENERAL OBJECTIONS TO DECLARATION OF WARREN THROCKMORTON**

Respondent objects to Dr. Throckmorton’s Declaration in its entirety.

Dr. Throckmorton fails to establish any logical or rational connection between the various studies or articles conducted or written by others to which he cites and the conclusions he purports to draw from them. Expert opinions must be based upon facts, research, and other matters that reasonably support the conclusions to be drawn. Experts are not entitled to rely on speculation or conjecture. Cal. Evid. Code §801; *Korsak v. Atlas Hotels, Inc.*, 2 Cal. App. 4th 1516, 1526 (1992). Accordingly,



Dr. Throckmorton's purported expert opinions lack proper foundation and should be excluded. Respondents incorporate these general objections in each of the specific objections listed below.

### **SPECIFIC OBJECTIONS TO DECLARATION OF WARREN THROCKMORTON**

<u>Purported Evidence</u>	<u>Objections</u>
1. Page 1, paragraph 6.  “A matter of some importance in a decision regarding the legal recognition of same-sex marital unions is a determination of whether heterosexual and homosexual unions are equal.”	1. Lacks foundation, vague and ambiguous, improper legal conclusion, improper lay opinion. Cal. Evid. Code §§702, 800. Dr. Throckmorton's Declaration does not establish that he has any legal expertise nor that he is qualified to direct the Court as to what matters are important in the legal recognition of same-sex unions.
2. Page 2, paragraphs 8-10.  “It may come as a surprise to learn that if given a hypothetical choice, a majority of psychologists would place a child with a heterosexual couple over a homosexual couple in an adoption proceeding.” [ . . . ]  “So what did these psychologists know about same-sex couples that bears on the subject of interchangeability? While the reasons for the survey results were not given in the study, I can describe representative research that might cause mental health professionals to reject the assumption that there is a parental equivalence between gay and straight couples.”	2. Lacks foundation, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§702, 801, 803. Dr. Throckmorton purports to use the survey described in his Declaration—which he <i>admits</i> does not include or explain the participants' rationales for their responses—to base his opinion that “mental health professionals may reject the assumption that there is a parental equivalence between gay and straight couples.” This study cannot form a reasonable basis for Dr. Throckmorton's speculative conclusion that unidentified mental health professionals “reject” the concept of parental equivalence. An expert is not entitled to rely on speculation or conjecture. <i>Korsak v. Atlas Hotels, Inc.</i> , 2 Cal. 4th 1516, 1526 (1992).
3. Page 2-3, paragraph 11.  “If there is any finding from social science that seems beyond dispute, it is that children do better in families where a mother and father are married, in the home, and providing input into child rearing.”	3. Lacks foundation, conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Throckmorton fails to articulate the basis for this broad, sweeping, general statement other than one bare reference to a publication called “Fatherless America.” Any further basis for Dr. Throckmorton's opinion is simply not disclosed.
4. Page 3, paragraph 11.	4. Conclusory, vague, lacks foundation, fails to establish a reasonable basis for expert

### Purported Evidence

“The massive literature on father absence is just one line of research that supports two-gender, married couples as being the optimal arrangement for child rearing.”

5. Page 3, paragraph 13.

“In other words, a biological father in the home providing emotional support to his daughter explains later onset of puberty better than any other variable studied.”

6. Pages 3-4, paragraph 14.

“Pubertal timing is important because early maturation in girls is one of the leading factors associated with such negative societal outcomes as teenage pregnancy, alcohol and drug use, mental health disturbances and even breast cancer. Thus, factors that lead to early puberty should not be encouraged. This research shows that the importance of fathers in a two-parent family was not simply an artifact of a traditional view of family, but rather a biological deterrent to the early maturity of daughters.”

7. Page 4, paragraph 15.

[Discussing a study reporting early puberty of girls]

“To quote the report: ‘The present data highlight the importance of early paternal involvement in the development of “healthy” reproductive functioning in daughters.’ The potential for such an optimal healthy outcome is not possible in a female-female union.”

8. Page 4, paragraph 16.

### Objections

opinion, lacks relevance. Cal. Evid. Code §§210, 350, 801. Dr. Throckmorton’s Declaration fails to cite to examples of the “massive literature” on father absence and also fails to establish any reasonable basis for concluding that such literature addresses or is relevant to *two-parent* families where couples are of the same gender.

5. Conclusory, vague and ambiguous, lacks relevance, fails to establish reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Throckmorton’s Declaration fails to establish any reasonable basis for concluding that this finding related to puberty onset and “emotional support” relates to or is relevant to *two-parent* families where couples are of the same gender.

6. Conclusory, vague and ambiguous, lacks relevance, fails to establish reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Throckmorton’s Declaration fails to establish the foundation for his conclusion that a father is necessary to avoid the litany of negative consequences claimed to arise from early puberty. Correlation is not causation; and, moreover, Dr. Throckmorton fails to establish the relevance of this study to two-parent, same-sex families.

7. Conclusory, lacks foundation, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§801. Dr. Throckmorton’s Declaration fails to establish that such literature supports the conclusion that “healthy reproductive functioning in daughters” is not possible in a female-female union or even that it addresses or is relevant in any way to a female-female union.

8. Conclusory, vague, and ambiguous; fails

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“Similar findings documenting biological and psychological effects of mother absence have long been accepted in social science.”

9. Page 4, paragraph 16.

“Nothing in the social science literature has caused us to question basic understandings of the biological and psychological need for opposite sex parents; it has come rather due to a concern for adult convenience.”

10. Page 4, paragraph 17.

“In short, the needs of children render same sex couples at a disadvantage when compared to opposite sex couples for reasons relating to biological mechanisms. Given the biological nature of the case, there are likely additional maturational cues and mechanisms that are optimally related to children having close family exposure to both a mother and a father.”

11. Page 4, paragraph 17.

“[I]t seems irrational that the state would make special effort to accommodate or encourage the least adequate arrangement for the care of children.”

12. Page 5, paragraph 18.

“[S]exual faithfulness does not seem to characterize gay relationships, especially among gay males.”

### Objections

to establish a reasonable basis for expert opinion. Cal. Evid. §801. Dr. Throckmorton cites to only one publication in support of his statement on the effects of mother absence and fails to provide any reasonable basis for his conclusion that such literature addresses or is relevant to *two-parent* families where couples are of the same gender.

9. Conclusory, argumentative, fails to establish relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Throckmorton’s Declaration fails to establish any reasonable basis for his assertion that the need for opposite sex parents is “a basic understanding” and any other view is only for “adult convenience.”

10. Conclusory, vague, and ambiguous; improper lay opinion, no reasonable basis for expert opinion. Cal. Evid. Code §210, 350, 702, 801. Dr. Throckmorton’s Declaration provides no details or reasonable basis for his conclusion that unidentified “biological mechanisms” render the children of same-sex couples at a disadvantage. Moreover, Dr. Throckmorton has not established any expertise in the biological sciences that would render him qualified to give such an opinion.

11. Conclusory, improper legal conclusion, argumentative, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§702, 801. Dr. Throckmorton fails to establish any reasonable basis for his conclusion that same-sex couples provide *ipso facto* the “least adequate arrangement” for the care of children.

12. Conclusory, argumentative, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. The data referenced by Dr. Throckmorton fails to support this conclusion *at all* with respect to gay women, and his interpretation of the data

## Purported Evidence

## Objections

with respect to gay men does not compare equivalent situations. In other words, he compares gay male relationships, however situated in terms of interpersonal commitment, with heterosexual marriages, rather than heterosexual relationships as a whole. Such a comparison is not a reasonable basis for an expert opinion.

13. Page 5, paragraph 19.

“The differences in fidelity are striking. The *Journal of Family Psychology* report found that only 38% of gay couples denied extramarital affairs. However, according to the Kinsey Institute, 80% of women and 65-85% of men are monogamous in heterosexual marriage.”

13. Conclusory, argumentative, vague and ambiguous, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion is conclusory, vague, and ambiguous in that it fails to define the nature of the couples referenced by the cited sources and to show that this data has any relevance to same-sex couples who seek to marry. Without providing such a foundation for how this data can be applied to same-sex couples seeking to marry, the statement is improper expert testimony.

14. Page 5, paragraph 21.

“However, the research picture of nonmonogamy in a majority of gay relationships is antithetical to the basic building block of opposite sex relationships.”

14. Conclusory, argumentative, vague and ambiguous, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion is conclusory, vague, and ambiguous in that it fails to identify the “basic building block of opposite sex relationships,” and it fails to provide a foundation for asserting that nonmonogamy in gay relationships bears a connection to any such purported basic foundation of opposite sex relationships. The statement is also argumentative in that it attempts to draw a conclusion not supported by the facts asserted.

15. Page 6, paragraph 24.

“The most consistent reading of the research on sexual orientation is that the causes of sexual attraction and the subsequent development of sexual identity are mediated by environment much more so than is gender.”

15. Conclusory, argumentative, vague and ambiguous, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion is conclusory, vague, and ambiguous in that it fails to identify any reasonably accepted causes of sexual attraction or the subsequent development of sexual identity. It also is inappropriate because it fails to provide a foundation showing that Dr. Throckmorton has

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16. Page 6, paragraph 25.

“One generally develops knowledge of one’s gender during the preschool years; however, a self-assignment of sexual orientation comes much later and through highly variable pathways.”

17. Page 7, paragraph 28.

“Gender and sexual orientation are not comparable categories and thus do not require equivalent remedies from state policy concerning marriage.”

18. Page 7, paragraph 29.

“I submit the public good is best served by laws that recognize what nature does: male and female bonding is the most likely foundation for family life and resultant social stability.”

19. Page 7, paragraph 30.

“However, my reading of the available research concerning gay and straight relationships provides a compelling interest for the state to maintain marriage as a union of opposite genders.”

## Objections

sufficient knowledge to made assertions about the most consistent reading of the research on sexual orientation, nor has he identified “the research” upon which he bases his statement. This statement is also not relevant to the subject of same-sex marriages in California..

16. Conclusory, argumentative, vague and ambiguous, lacks relevance, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. This assertion lack foundation in that it identifies no research indicating anything about the timing or nature of self-knowledge of one’s gender or sexual orientation. It is also conclusory, vague, and ambiguous in that it fails to identify the “highly variable pathways” allegedly related to determination of sexual orientation. This statement is also argumentative and conclusory in that it asserts that sexual orientation is a “self-assignment” without providing any factual support.

17. Conclusory, improper lay opinion, vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§702, 801. Dr. Throckmorton has not established any expertise that would render him qualified to opine as to what “remedies” regarding marriage are required from the State.

18. Conclusory, argumentative, vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Throckmorton fails to provide a reasonable evidentiary basis for such a conclusion.

19. Conclusory, improper legal conclusion, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§702, 801. Dr. Throckmorton has not established any expertise that would render him qualified to opine as to whether the state has a compelling interest in preventing same-sex marriage. Furthermore, he fails to provide details of

## Purported Evidence

20. Page 8, paragraph 32.

“Dr. Satinover’s analysis and conclusions, as set forth in his Declaration, generally comport with my experience as a clinical counselor and my independent research.”

21. Page 8, paragraph 33.

“I recognize many of the publications upon which Dr. Satinover relies as being peer-reviewed professional publications that report and analyze objective, non-ideological data.”

22. Page 8, paragraph 34.

“Such professional publications are one basis upon which a licensed mental health professional may develop a professional opinion regarding diagnosis and treatment of individuals.”

23. Page 8, paragraph 35.

“To the extent that Dr. Satinover’s conclusions may be controversial within contemporary professional circles, such controversy reflects typical scientific debate over the proper interpretation of the reported evidence and data.”

24. Page 8, paragraph 36.

“Nothing within Dr. Satinover’s Declaration conflicts with my understanding of any ethical rule within the profession of psychology.”

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the “available research” to which he refers.

20. Conclusory, vague, and ambiguous, lacks foundation, cumulative. Evid. Code §352, 702. Dr. Throckmorton fails to provide details of what of Dr Satinover’s analysis “generally comport[s]” with his experience and has failed to describe the independent research that he has carried out and how and in what respect it supports Dr. Satinover’s Declaration. Moreover, this statement merely attempts to repeat and bolster the evidence already provided by Dr. Satinover. It is accordingly cumulative and lacks any additional evidentiary value.

21. Conclusory, argumentative, vague and ambiguous, not the type of information relied on by experts in the field. Cal. Evid. Code §801. Dr. Throckmorton fails to identify which of the publications upon which Dr. Satinover relies are covered by this description.

22. Lacks relevance, vague and ambiguous. Cal. Evid. Code §350. Whether “such publications” (which remain unidentified) may assist in developing an individual diagnosis is irrelevant to the issues herein.

23. Lacks relevance, vague and ambiguous, conclusory, argumentative. Cal. Evid. Code §350; Dr. Satinover’s conclusions must be assessed on the basis set forth in his own Declaration.

24. Vague and ambiguous, lacks relevance, conclusory. Cal. Evid. Code §350.

## **GENERAL OBJECTIONS TO DECLARATION OF JEFFREY B. SATINOVER**

The Respondent objects to Dr. Satinover's Declaration in its entirety and submits it should be disregarded. Dr. Satinover fails to establish any rational or logical connection between the evidence to which he cites and the conclusions he purports to draw from such studies. Expert opinions must be based on matters which reasonably support the conclusions sought to be drawn therefrom, and experts are not entitled to rely on speculation or conjecture. Cal. Evid. Code §801; *Kobak v. Atlas Hotels, Inc.*, 2 Cal. App. 4th 1516, 1526 (1992). Moreover, with respect to Exhibit 2, Dr. Satinover wholly fails to establish any logical connection between any study summarized therein and same-sex couples and/or families. All the materials summarized therein relate as described to single parent or divorced families. *None* relate to two-parent families where both parents are of the same gender. Admissible evidence must be relevant, *i.e.*, have a tendency in reason to prove or disprove any disputed fact of consequence to the proceeding. Cal. Evid. Code §210. Accordingly, Exhibit 2 should be stricken on this separate and independent ground.

## **SPECIFIC OBJECTIONS TO DECLARATION OF JEFFREY B. SATINOVER**

<u>Purported Evidence</u>	<u>Objections</u>
1. Page 1, paragraph 4. "Both the differences between types of unions and the need that every child has for a mother and a father lead to a conclusion that there is a compelling governmental interest in preserving marriage as the union of a man and a woman."	1. Improper legal conclusion; fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §§702, 801. Dr. Satinover's Declaration does not establish that he has any legal expertise nor that he is qualified to direct the Court as to whether a "compelling governmental interest" exists such that same-sex marriage must be prohibited.
2. Page 1-2, paragraph 4.	2. Conclusory, vague and ambiguous, legal

### Purported Evidence

“The opinions expressed in this declaration are founded upon peer review materials of the type generally relied upon by experts in forming opinions about child development and the best interests of children.”

#### 3. Page 2, paragraph 5.

“All marriages of one man and one woman are inherently similar entities. However, unions of two men and unions of two women fracture into two distinct communities. Therefore, a society that validates marriages plus ‘same-sex marriage’ will create three separate kinds of communities with starkly unequal demographics, differential impact on children, and different multigenerational capacity . . .”

#### 4. Page 2, paragraph 6.

“To fracture society in this way represents a massive social experiment, most of the consequences of which would not be known for many generations.”

#### 5. Page 4, paragraph 7.a.

“On average, female unions last 4.9 years, male unions 6.9 years and marriages 20 years. Of the female unions surveyed, less than 1/5 of 1% endured 40 years or more; of the male unions, slightly more than 2/5 of 1% had. Of all combined male and female unions, fewer than 8% endured 15 years (5 years less than the average length of a marriage). More than six times as many marriages endure longer than this.”

#### 6. Page 5, paragraph 8.

“The argument has been made that granting marital status to male unions

### Objections

conclusion, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Throckmorton fails to disclose what peer-reviewed materials he has reviewed, apart from the materials cited in Exhibit 2, and elsewhere in his declaration, which do not relate to intact two same-sex parent families.

3. Conclusory, vague and ambiguous, fails to set reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover provides no reasonable basis for his conclusion that same-sex marriage will create the “starkly unequal” communities and other dolorous effects predicted in his Declaration.

4. Conclusory, argumentative, vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover’s declaration does not set forth the basis for his assertion that society would be “fractured” or his prediction that a “massive social experiment” would ensue.

5. Relevance §350, vague and ambiguous, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover fails to establish the validity of the comparisons between same-sex “unions” and “marriages”; no comparison is made between heterosexual and same-sex “unions” so no meaningful basis for evaluation is established.

6. Conclusory, vague and ambiguous, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover fails to explain or support



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and to female unions will stabilize both these unions and therefore society. However, data from the same survey indicates exactly the opposite: It will institutionalize a radically different definition of marriage and is likely therefore to destabilize society to the extent that marriage as properly defined stabilizes it.”

7. Page 5, paragraph 8.

“This is because the survey found that: [¶]a. 9% of female unions and 37% of male unions had non-monogamy agreements; in marriages, such agreements are so rare as to be immeasurably small.”

8. Page 6, paragraph 17.

“The same is true with respect to male unions and motherlessness . . . .”

9. Page 8, paragraph 15.

**“Children not raised by their own married mother and father are subject to increased risk of disadvantage and harm.**

“15. For children, the salient feature of a female union is its fatherlessness, for the simple reason that research has overwhelmingly demonstrated that any and every departure from the standard, although often unattainable, ideal of a biological mother and father married for an entire lifetime raising their own children is associated with quantifiable deficits in children at every stage of the lifecycle, persisting

### Objections

his conclusion that the data supports his conclusion that society is likely to be destabilized as a result of same-sex marriage.

7. Conclusory, vague and ambiguous, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover fails to provide any basis for his opinion that in marriage, non-monogamy agreements are “immeasurably small”. Moreover, the data referenced does not compare equivalent situations. In other words, Dr Satinover purports to compare same-sex relationships, however situated in terms of interpersonal commitment, with heterosexual marriages, rather than a comparison with heterosexual relationships as a whole. Such a comparison is not a reasonable basis for an expert opinion.

8. Conclusory, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §801. Dr Satinover provides no support whatsoever for his conclusory statement.

9. Conclusory, lacks relevance, vague and ambiguous, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Satinover fails to demonstrate that the research on “fatherlessness” addresses or is relevant or provides a reasonable basis for his conclusions with respect to *two-parent* families where couples are of the same gender.

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not only into the adulthood of the child, but even into the next generation.”

10. Page 8, paragraph 16.

“From fatherless homes come 63% of all youth suicides, 90% of all homeless and runaway children, 85% of all children with behavioral problems, 71% of all high school dropouts, 85% of all youths in prison, and well over 50% of all teen mothers.”

11. Page 8, paragraph 18.

“With respect to fatherlessness, quantifiable deficits occur in literally every area of development—social, psychological, intellectual, educational, emotional, relational, medical, even with respect to longevity, as well as with respect to sexuality, likelihood of cigarette use, drug and alcohol abuse, age of onset of sexual activity and likelihood of teen or earlier pregnancy.”

12. Page 9, paragraph 19.

“Furthermore, although these deficits can be mitigated by the addition of outside individuals of the opposite sex, and less-so by additional caretakers of the same sex, they can under no circumstances ever be entirely mitigated, regardless of the measures taken. There is no reason whatsoever to think that the mere addition of a legal document will undo the damage that no alternate measure of any other kind has ever been shown capable of doing.

13. Page 9, paragraph 19.

“The human nervous system evolved over four billion years anticipating a lengthy immersion in a physical and emotional environment shaped predominantly by two distinctly different and differently behaving creatures. However much plasticity that same nervous system also evolved to

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10. Lacks relevance, fails to set forth reasonable basis for expert opinion. Cal. Evid. Code §§210, 350, 801. Dr. Satinover fails to demonstrate that the research on “fatherlessness” addresses or is relevant to *two-parent* families where couples are of the same gender, instead of referencing issues related to single-parent families.

11. Fails to set forth reasonable basis for expert opinion; lacks relevance. Cal. Evid. Code §§210, 350, 801. Dr. Satinover’s Declaration fails to provide any basis for his assertion that the literature and statistics on fatherlessness are relevant or applicable to or address in any way *two-parent* families where couples are of the same gender, rather than referencing issues related to single-parent families.

12. Conclusory, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover provides no basis for his assertion that “outside individuals”—whether the same sex or opposite sex of a biological parent—cannot provide the same caretaking ability as a biological parent. And this conclusory statement also lacks foundation in relation to the assertion that non-biological parents can never entirely mitigate the alleged deficits associated with fatherlessness.

13. Conclusory, argumentative, vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover’s Declaration fails to establish any proper foundation for his extraordinary hyperbole regarding the “four billion year” evolutionary history requiring for human child rearing two “differently behaving” creatures, leading to a “breaking point” presumably caused

### Purported Evidence

use creatively, it will stretch only at the cost of increased tension, and every system has its breaking point.”

14. Page 9, paragraph 20.

#### “Fatherlessness & a host of difficulties

“Exhibit 2 contains a table of numbers, followed by corresponding summaries of findings from over 140 representative studies on children who have been raised without fathers for any reason.”

15. Page 10, paragraph 22.

“[O]ne may conclude from this chart that problems associated with fatherlessness in the teen years include an increased likelihood of early sexual activity, drug use, delinquency, and much else. Drug use, however, persists into early adulthood as well.”

16. Page 10, paragraph 23.

“As noted above, only recently has anyone considered that children might not need mothers. Therefore the literature demonstrating they do is less extensive than that demonstrating their need for fathers. Nonetheless, it exists and is growing recently in the wake of an increase in the number of single father families generated primarily by divorce. Here, too, the literature results are unsurprising: Children do not do well when they lack mothers.”

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by same sex-marriage.

14. Fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Dr. Satinover’s Declaration (and attached exhibit) fails to establish that the summaries of fatherlessness studies are relevant or applicable to intact two-parent families where couples are of the same gender. In fact, many of the studies are facially inapplicable to such couples, *e.g.*, those relating to the effects of divorce (Exh. 2 Nos. 24, 26) and declining rates of heterosexual cohabitation as contrasted with heterosexual marriage (Exh. 2 No. 29).

15. Conclusory, vague and ambiguous, fails to establish a reasonable basis for expert opinion. Cal. Evid. Code §801. Fails to establish a reasonable basis for expert opinion. Dr. Satinover’s Declaration (and attached exhibit) fails to establish that the summaries of fatherless studies are relevant or applicable to intact two-parent families where couples are of the same gender.

16. Conclusory, vague and ambiguous, lacks relevance, fails to establish foundation for expert opinion. Cal. Evid. Code §801. Again, Dr. Satinover’s Declaration attempts to apply the conclusions arising from “literature” without identifying such literature and without establishing that it relates to intact two-parent same-sex households rather than single-parent situations.

**GENERAL OBJECTIONS TO DECLARATION OF  
JOSEPH NICOLOSI**

The Respondent objects to Dr. Nicolosi's Declaration in its entirety and submits that it should be disregarded. Dr. Nicolosi simply supports Dr. Satinover's declaration without specifying what specific conclusions he supports and why. As such he provides no foundation or support for his supposed expert opinion. Accordingly, it should be excluded. Cal. Evid. Code §801. Moreover, Dr Nicolosi's evidence adds nothing to Dr Satinover's Declaration. As such it is wholly cumulative evidence and should be excluded on that independent basis. Cal. Evid Code §§352, 723; *Douillard v. Woodd*, 128 Cal.P.2d 6 (Cal. 1942).

DATED: March \_\_, 2004.

Respectfully,

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